

These minutes have not been reviewed or approved by the Board of Pharmacy.

NEBRASKA BOARD OF PHARMACY
MEETING MINUTES
November 6, 2006

ROLL CALL

Curt Barr, R.P. Chair, called the meeting of the Board of Pharmacy to order at 8:00 a.m. in the Staybridge Room of Staybridge Suites, located at 2701 Fletcher Avenue, Lincoln, NE. Copies of the agenda were sent to Board members and other interested parties prior to the meeting. The following Board members answered roll call:

C. Curt Barr, R.P., Chairperson
Kevin Borchert, R.P., Vice-Chairperson
Linda Labenz, Secretary
Richard Zarek, R.P.
Roger Kaczmarek, R.P.

A quorum was present and the meeting convened.

Also present from the Department were: Becky Wisell, Section Administrator; Vonda Apking, Credentialing Coordinator; Cecilia Curtis-Beard, Licensing Specialist; Pharmacy Inspectors: Tony Kopf, R.P., Ronald Klein, R.P., and Mike Swanda, R.P.; Duane Newland, Jeff Newman, and Michael Grutsch, P.A., Program Manager, from Investigations Division; and Lisa Anderson, Assistant Attorney General.

REVIEW OF AGENDA

Additions, Modification, Reordering

Borchert requested the Board to removed Scott Bottolfsen, Abby Johnson, Elizabeth Knaak, Craig Morgan, and Greg Leinen from the consent agenda for further discussion. Zarek asked the Board to also removed Michael Mason. Barr requested Matthew Schaecher, Jared Jaeger, and Innoviant Pharmacy Inc and Precision Rx Inc be removed. Wisell asked Robin Crow and Alexandra Romano be removed.

Adoption of Consent Agenda

Kaczmarek moved, seconded by Labenz to approve the consent agenda as amended. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

Adoption of Agenda

Zarek moved, seconded by Labenz, to approve the agenda as amended with the Chairperson having the authority to rearrange as needed. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

**INVESTIGATIONAL REPORTS, DISCIPLINARY REPORTS AND CONTROLLED SUBSTANCES AUDIT REPORTS--
CLOSED SESSION**

Kaczmarek moved, seconded by Labenz to close the session at 8:06 a.m. to receive investigation reports, disciplinary reports, controlled substances audit reports, and quarterly report from Investigations. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

Zarek recused himself from the meeting at 8:27 a.m. Zarek returned to the meeting at 8:49 a.m.
Kaczmarek recused himself from the meeting at 9:20 a.m. Kaczmarek returned to the meeting at 9:30 a.m.

Kaczmarek moved, seconded by Borchert to reopen the session at 1:24 p.m. Voting aye: Barr, Borchert, Kaczmarek, Labenz and Zarek. Voting nay: None. Motion carried.

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DISCIPLINARY/NON-DISCIPLINARY INFORMATION – ACTIONS TAKEN/PENDING –CONSENT – OPEN SESSION

(7) Disciplinary/Non-Disciplinary Information – Actions Taken/Pending – Consent

Disciplinary/Non-Disciplinary Information – Actions Taken/Pending

Name	Actions Taken and/or Pending	Alleged Violation
Crosier, Lea Anne	Petition to Revoke Probation 8/24/06 Amended Petition to Revoke Probation 10/5/06 Hearing continued to 10/31/06 at 1:30 p.m.	Failure to appear for body fluid/chemical testing, use of prescription drugs (tramadol and carisoprodol) without a valid prescription, removed two triameterene from stock inventory and returned two triameterene from her personal prescription back into the stock bottle. Employment loss on 8-18-06. Failed to report loss of employment to the department within 7 days.
Irish, Kevin	Petition for Disciplinary Action 3/31/06 Hearing 11/21/06 at 9:00 a.m.	Four convictions of Driving Under the Influence; alcohol dependence; failure to report misdemeanor conviction within 30 days.
Lundberg, Tod	Petition for Disciplinary Action and Temporary Suspension 9/11/06 Order on Agreed Settlement 10/12/06 <ul style="list-style-type: none"> • Censure • Civil Penalty \$500 • 5 years' probation 	Four convictions of Driving Under the Influence; alcohol dependence; failure to report misdemeanor convictions within 30 days.
Sunderman, Vicki	Notice of Request for Administrative Hearing Hearing 8/30/06 at 11:00 a.m. Order on Motion to Modify Probation 10/12/06 Defendant's motion to modify probation was denied.	Request to terminate probation prior to May 1, 2007 date.
Zenon, Terry	Petition for Disciplinary Action 6/16/06 Order Rejecting Agreed Settlement 7/6/06 Hearing 12/12/06 at 9:00 a.m.	Misdemeanor conviction for assault of a minor; failure to report misdemeanor conviction within 30 days.

Non-Disciplinary Information – Actions Taken/Pending

(9A) Pharmacist Intern Applications with Misdemeanor/Felony Convictions (22)

(9B) Pharmacist Applications with Either Convictions/Disciplinary Action/Other (2)

(9C) Mail Service Pharmacy Renewal with Past Disciplinary Action (2)

(10) Pharmaceutical Care Agreements (4)

(11) Pharmacy Technician Manuals (3)

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STUDY ON DISCIPLINARY ACTIONS TAKEN BY THE DEPARTMENT FOR MEDICINE & SURGERY, PHARMACY, DENTISTRY, AND NURSING

Melissa Drozda and Juan Ramirez gave a presentation to the Board concerning research titled "Compliance with Terms of Probation: A Retrospective Study of Disciplined Health Professionals in Nebraska".

APPROVAL OF MINUTES

September 11, 2006

Page 1:

Page 2:

Page 3:

Page 4:

Page 5: Remove Labenz from the vote because she was absent in the 2nd and 4th paragraph.

Page 6: Under Pharmacist Access Issues Meeting change "Ms." to "Dr." in lines 2 and 4.

Page 7:

Page 8: Under Adjournment change "Roger" to "Kaczmarek".

Zarek moved, seconded by Kaczmarek, to approve minutes from September 9, 2006 as amended. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

APPLICATION REVIEW

Pharmacist Intern Applications with Misdemeanor/Felony Convictions (22)

Kaczmarek moved, seconded by Zarek, to approve the pharmacist intern application of Robin Crow, Jared Jaeger, Elizabeth Knaack, and Alexandra Romano. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

Zarek moved, seconded by Labenz, to postpone the Board's decision on the pharmacist intern application of Matthew Schaecher. The Board requested the applicant to appear before the Board at the January 8, 2007 meeting and submit official court documentation concerning all arrests and convictions for the Board to review. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

Borchert moved, seconded by Labenz, to postpone the Board's decision on the pharmacist intern application of Scott Bottolfsen. The Board requested the applicant to appear before the Board at the January 8, 2007 meeting and submit a copy of the Drug and Alcohol Evaluation completed for his criminal probation and official documentation from his probation officer concerning his current probationary status for the Board to review. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

Borchert moved, seconded by Labenz, to postpone the Board's decision on the pharmacist intern application of Abby Johnson. The Board requested the applicant to appear before the Board at the January 8, 2007 meeting and submit official court documentation on her MIP and DUI convictions and a letter from the diversion program on her current status concerning the recent DUI conviction for the Board to review. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

Borchert moved, seconded by Labenz, to postpone the Board's decision on the pharmacist intern application of Greg Leinen. The Board requested the applicant to appear before the Board at the January 8, 2007 meeting and submit official court documentation concerning those convictions concerning the recent DUI conviction for the Board to review. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

Borchert moved, seconded by Labenz, to postpone the Board's decision on the pharmacist intern application of Craig Morgan. The Board requested the applicant to appear before the Board at the January 8, 2007 meeting, obtain a chemical dependency evaluation and submit a copy of evaluation for the Board to review. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

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Pharmacist Applications with Either Convictions/Disciplinary Action/Other (2)

Labenz moved, seconded by Zarek, to approve the initial pharmacist licensure application of Michael Mason. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

Mail Service Pharmacy Renewal with Past Disciplinary Action (2)

Labenz moved, seconded by Borchert, to approve the mail service renewal applications of Innoviant Pharmacy, Inc. and Precision Rx, Inc. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

Reinstatement of a Pharmacist License after Non-Disciplinary Revocation of More Than One Year (1)

Kaczmarek moved, seconded by Zarek, to reinstate the pharmacist license of John Johnson with probationary terms and conditions for five years. The basis for the probationary terms and conditions is a recent diagnosis of alcohol dependency. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried.

PHARMACEUTICAL CARE AGREEMENTS (4) - CONSENT

PHARMACY TECHNICIAN MANUALS (2) - CONSENT

PRACTICE QUESTION – PHARMACY TECHNICIANS ADMINISTRATION OF IMMUNIZATIONS (ROGER BRINK – 12:00 P.M.)

The Board discussed and agreed if a pharmacy would like technicians to administer immunizations, the following must be completed:

- Pharmacies must include in their pharmacy technician manual that the pharmacy technicians will be administering immunizations;
- Pharmacies must submit a plan for training the pharmacy technicians to administer immunizations; and
- Pharmacies must submit their pharmacy technician manual to the Board for approval.

Barr stated he believed immunizations require professional judgment and technicians do not have the authority to make professional judgment. Anderson stated that the Attorney General's office had not addressed this situation.

2007 LEGISLATION

Uniform Licensing Law (ULL) Rewrite

- Wisell informed the Board due to the fiscal impact; the provision to increase membership of the Board has been removed.
- Wisell stated a provision has been added that states "A credential may only be issued to a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a professional or commercial license under 42 U.S.C. 1621, or a nonimmigrant whose visa for entry is related to such employment in the United States".

Wisell commented that this language could affect some of the students at the colleges who have a certain type of visa which will not allow them to work outside the college. Wisell added the deadline for any comments is Wednesday, November 15th.

- Wisell asked the Board members if they were concerned with the way the endorsement language reads. "The department may, with the recommendation of the appropriate board, issue a credential by endorsement to practice any profession to a person who has been credentialed by another state or territory of the United States or the District of Columbia upon certification by the proper authority of the state, territory, or District of Columbia that the applicant is duly credentialed or has been duly credentialed and (b) whether the credential has been ever been disciplined, (20) the person having met the requirements for obtaining a credential for the appropriate profession as provided in the applicable practice act and rules and regulations governing the profession, and (3) proof that the applicant is of good character and standing in his or her profession."

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Wisell commented that if a pharmacist is licensed in another state and has good moral character, the applicant would be eligible to become licensed in our state. She suggested the Board require applicants to take the MPJE and the Board should keep a close eye on this language in the future.

- Borchers stated on page 30, section 32, #4, states "Each credential holder under the Uniform Credentialing Act shall notify the department as soon as possible of any change to the address of record so that the department can update the record of the credential holder under section 25 of this act. Borchers said "as soon as possible" is too vague and it should read "within 30 days". The Board agreed.
- Borchers stated on page 36, section 38(i), states "If a state-administered jurisprudence portion of the credentialing examination was failed, the examinee may retake that portion without charge". Borchers informed the Board it should read "the examinee may retake that portion at their own cost". The Board agreed.
- Borchers stated on page 74, section 65, states "each board shall consist of four members" but it should state "five members". The Board agreed.
- Borchers said on page 99, section 82, it was decided not to change the word 'patient' to 'consumer'. On line 5, the word "consumer" should be changed to "patient". The same should also be done on page 100, section 5, line 2. The Board agreed.

The Board also discussed that the Licensee Assistance Program (LAP) fees do not apply to pharmacy interns. Labenz said if the Board recommends a pre-evaluation from an applicant that is not yet licensed, that applicant would have to pay for an evaluation at their own cost. Borchers asked whether the Board could recommend that the LAP fee be increased by \$1.00. Borchers added the increase would give LAP the funds to complete the necessary evaluations. Barr commented that the increase would be a huge help to LAP.

Practice Act Changes

The Board members will review the document and provide their comments to Wisell before the November 15th deadline.

FINANCIAL REPORT

Wisell explained the financial report. The financial report shows that the Board is within budget. The cash balance as of September 30th was \$733,532.

REGULATIONS UPDATE

181 NAC 6 Cancer Drug Repository Program

Wisell stated that a hearing would be held on 181 NAC 6 draft regulations on either December 7th or December 21st.

172 NAC 131 Regulations Governing Wholesale Drug Distribution

Wisell informed the Board that a hearing would be held on 172 NAC 131 draft regulations on either December 7th or December 21st.

175 NAC 8 Regulations Governing Pharmacies

175 NAC 8 draft regulations will be forwarded to the Attorney General's office for their review based on when the pharmacy licenses renew.

181 NAC 7 Immunosuppressant Drug Repository Program

Wisell has not received an answer from Legal concerning whether inspections could be required under these draft regulations. A hearing date has not been scheduled.

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PRESCRIPTION DRUG MONITORING PROGRAM (PMP) GRANT

Klein informed the Board that the states can apply for a \$50,000.00 development grant. Borchert moved, seconded by Kaczmarek, for Ronald Klein to proceed with the PMP Grant application and submit the grant for the January 11th deadline. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Voting nay: None. Motion carried. **Action Item: Klein will write the grant application and submit it to the Board for review so that the January 11, 2007, deadline can be met.**

REPORT ON THE ALL HEALTH CARE RELATED BOARD MEMBERS MEETING

Wisell commented that she and Borchert attended the All Health Care Related Board Members Meeting. The Department is surveying for topics of interest and suggestions for what time of the year would work best for attendance. The Board discussed there should be more communication between all the Boards.

PLAN B – STANDARD OF CARE

The Board discussed it is the standard of practice and the right of the pharmacist to refuse to fill a Plan B prescription. Kaczmarek suggested pharmacies that do not carry Plan B should have a list of pharmacies who carry Plan B so they can inform the patient. Zarek stated if the pharmacy refuses to fill the prescription, the patient should receive the prescription back. The Board discussed the fact that Plan B is an OTC prescription. Borchert said the physician should have a list of pharmacies who carry Plan B to assist the patient. The Board agreed that pharmacies have the right to refuse to fill the prescription but should return the prescription to the patient.

NABP ISSUES

There was nothing to report.

UPDATE FROM THE TELEPHARMACY COMMITTEE OF THE NEBRASKA PHARMACISTS ASSOCIATION (NPA)

Borchert commented that the committee has addressed the practice of telepharmacy, the use of automated dispensing machines in long-term care facilities in Nebraska, and the use of telepharmacy in remote areas of Nebraska. The committee discussed advantages and disadvantages. Borchert commented that Virginia allows the use of automated dispensing machines. Also that North Dakota, Texas, and Arkansas use telepharmacy. Borchert will keep the Board updated on any developments concerning telepharmacy.

COMMITTEE REPORTS

MPJE Committee

Nothing to report at this time. The next MPJE review meeting is scheduled for January in Texas.

Tri-Partite Committee on Internship

Wisell stated that the contract is not available yet, once it is completed the contract dates will be adjusted. Labenz stated the purpose of the proposal was to have the grant distributed at a specific time.

Formulary Advisory Committee

There is nothing to report at this time. The Department will be scheduling a meeting of this committee either by the end of the year or early next year.

ACTION ITEMS

Barr commented that he had reviewed the letter for PrairieStone Pharmacy. Apking will research whether this letter was ever sent to them. **Action item: Apking will research whether the PrairieStone Pharmacy letter was ever mailed to them.**

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NEW EXPENSE REIMBURSEMENT PROCEDURES

Wisell informed the Board there were new expense reimbursement forms. The new forms should have a faster turn around time for getting expense reimbursement checks to the Board members. There is a pilot credit card program to help pay hotel cost but it ran into some problems. Wisell discussed some of the requirements for reimbursement of expenses.

SET 2007 MEETING DATES

The Board set their 2007 meeting dates as follows January 8th, March 5th, May 7th, July 9th, September 10th (Omaha) and November 5th.

CORRESPONDENCE AND GENERAL INFORMATION

Nothing at this time.

BOARD MEMBER RECOGNITION

Zarek commended Dr. Curt Barr and Linda Labenz for the years of service they have provided the Board of Pharmacy.

ADJOURNMENT

Labenz moved, seconded by Zarek, to adjourn the meeting at 4:36 p.m. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Respectfully submitted,

(Signature on file with Department)

Kevin Borchert, Vice-Chairperson
Board of Pharmacy